

SECTION H SPECIAL CONTRACT REQUIREMENTS

H.1 CAPITAL INVESTMENTS.

H.1.1 Funding Responsibility.

The Contractor shall be responsible for funding all capital investments required to acquire, own, maintain, operate, upgrade and repair the MDW Installation UDC Systems in a safe, reliable condition, and to meet the requirements listed herein. Cost of acquisition of the UDC System should be capitalized. Costs of expansion or upgrades of the UDC Systems will be funded by the Contractor as capital investments and recovered over a period that is consistent with the Contractor's standard capital investment recovery process or as required by a financing institution. Any substantial initial utility system upgrade or utility system replacement shall be initiated by the Contractor during the first year of the contract and shall be completed and fully operational to all customers to meet the required timelines indicated in Paragraph C.5.1.1. If the Contractor cannot complete system upgrades or replacements within the required timelines indicated in Paragraph C.5.1.1, the Contractor shall clearly indicate so on the Technical portion of the Initial Capital Improvement Plan with an estimated completion date and reason for extension.

H.1.2 Capital Investment for System Upgrade/Enhancements (not associated with new or renovated facilities).

The Contractor shall be responsible for funding all capital investments required for system upgrades/enhancements. The Contractor shall prepare budgetary cost estimates as requested by the Contracting Officer. The amortization period and capital recovery period shall be in accordance with the Contractor's standard methodology or as required by a financing institution. The Contractor and the Government will discuss and negotiate any portion of Government pre-payment (if any) and the amortization period. Close cooperation between the Contractor and the Installation will be paramount to a successful and mutually rewarding contract.

H.2 CONTRACT PLANS AND REPORTS.

H.2.1 Capital Improvement Plans.

H.2.1.1 Initial Capital Improvement Plans. The Initial Capital Improvement Plan shall be submitted in the initial proposal in two sections. See Paragraph L.10.2.1 for additional details. The Contractor shall implement the Initial Capital Improvement Plan as proposed. These plans will be incorporated into the Contract at the time of Contract award and will be binding upon the Contractor for satisfactory performance. The Contractor shall notify the Contracting Officer within 10 days of discovering that a schedule in the ICIP will not be met and shall clearly identify the estimated new completion date and the reason for the extension.

H.2.1.2 Capital Improvement Plan. The Contractor shall submit a Capital Improvement Plan (CIP) 30 days prior to the first Annual Review Meeting (H.2.5) and submit revised CIPs for each successive Annual Review Meeting. The first CIP shall include the original and any revised data from the proposed ICIP plans. The CIP shall be submitted per Work Group per UDC system. The CIP shall describe all capital improvements the Contractor has proposed or is planning during the remainder of the Contract period. The Government will provide the Contractor a Five Year Master Plan for each Installation after contract award and when revised. The CIP shall include the Contractor's rationale for making the improvement, the proposed construction schedule, including estimated outage times to Installation customers, and the anticipated construction completion date. The CIP shall include a project management chart for each anticipated capital improvement project, indicating the project steps, project step duration's, and critical path of project steps. The CIP shall also contain, for each project, the estimated person hours; labor rates; equipment rates; description of equipment to be used; amortization period and interest rate; Contractor's cost of money; and total estimated price. The Contractor shall notify the Contracting Officer within 10 days of discovering that a schedule in the CIP will not be met and shall clearly identify the estimated new completion date and the reason for the extension. The Contractor shall also notify the Contracting Officer within 10 days of discovering stated costs in the CIP will exceed a variance of +/- 20% and shall clearly identify the reasons for variance and a revised cost estimate to completion. The revised project schedules and cost estimates will be reviewed during each Annual Review Meeting.

H.2.2 Performance Compliance Plan.

The Contractor shall submit a Performance Compliance Plan (PCP) as part of the initial proposal (See Paragraph L.10.2.1) and shall revise and submit successive PCPs to the Contracting Officer 30 days prior to each Annual Review Meeting. The PCP shall be submitted per Work Group per UDC system. The Contractor shall implement the PCP incorporated into this Contract at the time of Contract award. The Contractor shall notify the Contracting Officer within 10 days of discovering that a standard or requirement documented in the PCP will not be or has not been met and shall clearly identify the reasons for noncompliance and shall indicate the Contractor's plans to remediate the noncompliance. The PCP shall include sufficient detail for the Contracting Officer to verify that all required performance standards are satisfied. The PCP shall include calculations required by the specifications cited in Paragraph C.8, Standards.

H.2.3 Operation and Maintenance (O&M) Plan.

H.2.3.1 Initial O&M Plan. The Contractor shall submit an Initial Operation and Maintenance (O&M) Plan as part of the initial proposal (See Paragraph L.10.2.1). The Contractor shall implement the Initial O&M Plan(s) (See Section L.) incorporated into this Contract at the time of Contract award. The Contractor shall notify the Contracting Officer within 10 days of discovering that any aspect of an O&M Plan will not or has not been met and shall clearly identify the reasons for noncompliance and the Contractor's plan to remedy the noncompliance.

H.2.3.2 Summary O&M Plan. The Contractor shall submit 30 days prior to each Annual Review Meeting, a Summary O&M Plan which indicates the past year's monthly expenditures in person hours, labor costs, equipment, equipment costs, materials, material costs, overhead costs and administrative and general (A&G) costs, for each Installation, for each UDC System. The Summary O&M Report shall include a section containing "lessons learned" by the Contractor of the previous year of operation, maintenance, and ownership of the UDC System(s). Although this solicitation includes a Firm Fixed Price component, the O&M cost component may be adjusted in accordance with FAR Clause 52.216-5, Price Redetermination. The Government desires a historical documentation of the Contractor's O&M costs. The historical documentation may be utilized for cost realism determinations.

H.2.4 Quality Service Plan

H.2.4.1 Goals. The goal and desired end result of Contractor management practices, system design philosophies, and system operation and management procedures should be to provide continuous, quality utility service to each service location on the Installations, 24 hours per day, every day of the year.

H.2.4.2 Metrics. The Contractor(s) will develop performance measures for each system similar to the following: 1) Customer complaints received by the Customer Services Representative; 2) Service Response; 3) Service Unavailability; 4) System Quality.

H.2.4.3 Benchmarks. During the first contract year, the Contractor(s) will develop benchmarks for each of the performance measures. This effort will include, but not be limited to: documentation of the parameters and data used in the measurements; authentication of the proposed performance levels via research of comparable systems in Virginia, Maryland and District of Columbia (including performance metrics data to provide a basis of comparison); and written surveys of the customer base to provide a baseline consensus of performance. The Contractor(s) may propose additional or alternate performance metrics, provided that such changes are substantiated by information to indicate that the proposed metrics are industry standard or more appropriate to the specific utility. The proposed benchmarks will be submitted for Government review and comment within 14 months after assumption of system responsibilities. The Contractor and Administrative Contracting Officer will meet as required to resolve comments and adjust QSP benchmarks. The agreed-upon benchmarks will become the marks against which the following Performance Year will be measured. The performance benchmarks shall be examined at each successive Annual Review Meeting (see Section H) and revised as required to satisfy Installation mission readiness requirements.

H.2.4.4 Reporting. The Contractor shall submit 3 copies to the Contracting Officer, 30 days prior to each Annual Review Meeting, a revised annual Quality Service Plan for each Work Group organized by UDC system. Each report shall provide data and summary for the performance parameters, documenting all occurrences where service measurements deviate from benchmarks.

H.2.4.5 Definitions.

H.2.4.5.1 Performance Year. Performance year is defined as the Government fiscal year (October 1 through September 30).

H.2.4.5.2 Customer. A customer is defined as a user of a utility service at a point of service or premises that would commonly be metered in private industry.

H.2.4.6Measures.

H.2.4.6.1 Customer Complaints. This measure will assess the rate of customer complaints per 1,000 customers on a Performance Year basis. The number of customers is the average number of points of service during the Performance Year. For the purpose of this contract, customer complaints are contacts to the Customer Services Representative by customers for unresolved service issues. Unresolved service issues can include such things as repetitive service disruptions, poor response time, and property damage. The number of customer complaints will be obtained from the Customer Services Representative.

H.2.4.6.2 Service Response. This measure will assess the Contractor's service response on a Performance Year basis. Service Response is the period of time that begins at the time that the Contractor receives a call from the Installation Public Works Service Order Desk and ends when the Contractor's employees arrive at the customer's premises to effect repairs. Data presented should include average response time for both duty and non-duty hours.

H.2.4.6.3 Service Unavailability. This service quality measure will assess the duration and frequency of system service interruption that customers experience on a Performance Year basis. The Contractor(s) will propose methods for reporting Service Unavailability.

H.2.4.6.4 System Quality. This measure will assess the performance in providing required system performance parameters necessary to provide safe, adequate, and dependable service. System parameters (flow, pressure, capacity, etc.) required to be monitored and/or recorded shall be summarized, with deviations from acceptable values noted. The location for each deviation will be listed, with time, date, and system conditions noted.

H.2.5 Annual Review Meeting.

The first Annual Review Meeting shall take place on or about the Jan 15th following 50% expenditure of funding for an Initial Capital Improvement Plan (ICIP) by Work Group. The Contractor shall notify the Contracting Officer in writing when the first 50% spending threshold has been reached for each Work Group ICIP. The Contractor shall meet at the Installation's choice of location to review and adjust if necessary the Capital and O&M Cost components, and discuss the contents of revised ICIP(s) and/or CIP(s), Performance Compliance Plan(s) (PCP), Quality Service Plan(s) and Summary O&M Plan(s). The difference between the actual Contractor expenditures and estimated Contractor expenditures will be identified as True-Up Costs. If any True Up Costs are revised by mutual agreement, the Contractor can expect the revised funding by 30 Oct of the same calendar year. If the True Up Costs are due to the Government, the True-Up Costs will be taken as credits to the Contractor's expenditures. Following the first Annual Review Meeting, following meetings will be held annually on or about Jan 15 of each year or as mutually agreed.

H.2.6 Pricing Proposal after Initial Pricing Term.

See FAR Clause 52.216-5, Price Redetermination, regarding submission of pricing data for contract years 16 through 50. The Contractor shall submit revised pricing data on the economic spreadsheets provided by the Government, 24 months prior to the end of the first 15 year pricing term for the next pricing term.

H.3 REPORT AND PLAN APPROVAL.

The Contractor shall prepare and submit to the Contracting Officer the plans and reports specified in this Section. All such reports and plans, after review and approval by the Contracting Officer shall be incorporated and become a part of this Contract.

H.4 TERMINATION LIABILITY.

H.4.1 Termination Schedule.

Termination liability will be determined primarily by the method of accounting/finance proposed by the Contractor. The Contractor shall establish a termination schedule for the system at the beginning of the contract term. The termination schedule shall be updated annually during the contract term, recording initial and periodic capital investment, payments for capital recovery, and providing a reconciliation of payments and un-recovered capital investment. The Government's termination liability associated with the system shall be limited to the contractor's un-recovered capital investment at the point of termination plus any additional termination liability in accordance FAR 52.249-2, Termination for Convenience of the Government (Fixed Price) or FAR 52.249-6 Termination (Cost Reimbursement).

H.4.2 Additional Costs.

Additional termination costs that may be included in the termination liability are reasonable and documented costs that the Contractor may have incurred to discontinue its requirement to provide the service required under this contract.

H.5 INSURANCE REQUIREMENTS.

Note: It is recommended that the Contractor furnish a copy of the foregoing requirements to its insurance company, in order to assure that an insurance certificate is issued meeting the minimum requirements shown. The insurance certificate shall also show the contract number to which it applies as well as a brief description and location of the work.

The Contractor shall provide evidence of all insurance required below to the Contracting Officer within 10 days after Contract award, and before start date.

H.5.1 Worker's Compensation and Employee's Liability Insurance.

Compliance with applicable worker's compensation and occupational disease statutes shall be required. Workers compensation and employer's liability insurance in the minimum amount of \$100,000 shall be required. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational disease shall be required under the employer's liability section of the insurance policy; however, such additional insurance shall not be required where contract operations are so commingled with a Contractor's commercial operations so that it would be impractical to require such coverage. Employer's liability coverage or monopolistic funds that do not permit the writing of workers' compensation by private carriers will not be allowed.

H.5.2 General Liability Insurance.

Comprehensive general liability insurance for bodily injury with minimum limits of \$500,000 per occurrence shall be required. No property damage liability is required.

H.5.3 Automobile Liability Insurance.

Comprehensive automobile liability insurance covering the operation of all automobiles used in connection with the performance of the contract in the minimum limits of \$200,000 per person, and \$500,000 per accident for bodily injury, and \$20,000 per accident for property damage.

H.5.4 Effective Date.

An endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective until thirty (30) days after the Insurer or Contractor(s) gives written notice to the Contracting Officer.

H.5.5 Catastrophic Insurance.

If the Contractor(s) has catastrophic insurance, the Contractor(s) shall provide a copy of the coverage to the Contracting Officer. The Contractor(s) shall propose how it plans to protect itself from a catastrophic loss (e.g. earthquake) and/or personal injury due to negligence. Prior to commencement of work, the Contractor shall furnish the original of its insurance certificate to the Contracting Officer. The Contractor shall maintain during the entire contract period the following minimum insurance requirements. See Section I (FAR 52.228-5).

H.6 CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE.

H.6.1 Change Request.

In accordance with the schedule below, either party may request a change in rates or terms and conditions of service. Both parties agree to enter into negotiations concerning such changes upon receipt of a written request by either party detailing the proposed changes and specifying the reasons for the proposed changes. Both parties shall agree to the effective date of any changes in rates or terms and conditions of service. The Contractor agrees that throughout the life of this contract, the charges so negotiated will not be in excess of published and unpublished rates charged to any other customer of the same class under similar terms and conditions of use and service.

H.6.2 Alternative Dispute Resolution.

The failure of the parties to agree upon any change after 60 days shall be resolved using Alternative Disputes Resolution (ADR). This will be accomplished in accordance with FAR 33.214. Possible ADR methods include, but are not limited to, mediation, neutral evaluation, fact-finding and arbitration. During the resolution process, the Contractor will continue performing contract requirements at the current approved terms and conditions. In the event that no resolution is reached and all ADR methods are exhausted, resolution will occur pursuant to the Disputes Clause of this contract.

H.6.3 Resultant Changes.

Any changes to rates, terms, or conditions as a result of such negotiations shall be made a part of this contract by the issuance of a contract modification.

H.6.4 Schedule for Change in Rates or Terms and Conditions.

When the contractor has reached a 50% expenditure level for each Capital Improvement Project and annually thereafter, a change in rates or terms and conditions may be requested. This request must be in writing to the Contracting Officer. This request must be received by January 15 of each year after the 50% expenditure level is achieved and annually thereafter.

H.7 FORCE MAJEURE.

See FAR 52.249-14, Excusable Delays. See Section I, Contract Clauses.

H.8 ENVIRONMENTAL LIABILITY.

See Paragraphs 18 and 19 in the Sample Easement, Section J, for environmental liability and compliance issues. The U.S. Army Corps of Engineers, Baltimore District is performing an Environmental Analysis (EA) for each NCR Installation UDC System. A draft report of the EAs is available in Section J.

H.9 SAFETY.

H.9.1 OSHA Standards.

The Contractor shall comply with Occupational Safety and Health Act (OSHA) Standards, (construction Safety and Health Regulations Part 1926 and Occupational Safety and Health Standards, Part 1910).

H.9.2 Damage Report.

The Contractor shall report on a monthly basis to the Contracting Officer the number of employees of the Contractor performing on the Installation(s). All accidental damage to Government property resulting in \$2,000.00 or more in damage to Government property must have a DA Form 285 (U.S. Army Accident Investigation Report) completed and submitted to the Contracting Officer.

H.9.3 Accident Report.

All accidents that occur on Government premises involving the Contractor will be reported to the Contracting Officer within four (4) hours of occurrence. The Contractor shall submit a full written report to the Contracting Officer within twenty-four (24) hours following the occurrence of such damage, loss or injury.

H.9.4 Safety Precautions for Ammunition and Unexploded Ordnance.

The Installation's local policies and regulations would apply to the discovery of old ammunition or unexploded ordnance by Contractor in performing work under terms of the contract. Also applicable to this situation and to be incorporated by reference into the contract is the Department of Defense Policy to Implement the EPA's Military Munition Rule (MR) (62 FR 6621, February 12, 1997) and DoD Manual 4145.26-M.

H.10 SECURITY REQUIREMENTS.

H.10.1 Documentation.

The successful Contractor shall be required to contact the Installation Security Division within 10 days after the contract award to initiate all documentation for clearances. All personnel requiring clearance must provide verification of citizenship: (i.e. Birth Certificate, Citizenship Certification, Passport, NOTE: applicable documentation can be obtained from the Bureau of Vital Statistics) at the time of meeting with the Security Division. All documentation must be completed and submitted to the Security Division within 20 days after contract award. The Government will provide security badges to all personnel for authorized areas of the Installation, pending successful security document submission.

H.10.1.1 DD Form 254 – Contract Security Classification Specification.

AS a minimum the Contractor will be required to complete a DD Form 254. This form can be found in Section J, attachment L.

H.10.2 List of Employees.

The Contractor shall provide to the Commander, Security Division, through the Contracting Officer's Representative (COR), on company letterhead, a list of all employees performing work the Installation(s) under this contract. The list will include the full name, address, social security number, date and place of birth, and citizenship of each employee. The list will be kept current at all times.

H.10.3 Security Measures.

The Contractor must comply with those Operations Security (OPSEC) measures that may be required by the Government to protect and control indicators that give an insight into military operations, plans, or other activities.

H.10.4 Entrance to Installation.

The Contractor shall comply with all security procedures for entering the Installation(s) and its facilities, to include any special security procedures that may be established for entry to Restricted Areas or mission essential/vulnerable areas. The Contractor is responsible for all restricted badges issued to its employees. Lost or damaged badges shall be immediately reported to the COR.

H.10.5 Revocation of Permissions.

The Government reserves the right to terminate the entry of any Contractor employee upon disclosure of information that indicates the individual's continued entry to the installation is not in the best interests of national security. Additionally, the violation of or deviation from the established security procedures by the Contractor's employees may result in the confiscation of identification media and the denial of future entry to the Installation.

H.10.6 Delays.

The Government shall not be responsible for delays occasioned by non-compliance with these instructions. The Contractor is responsible for any delays caused by employees who report to work without proper identification badge(s). See requirements of Section C, Statement of Work.

H.10.7 Return of Passes/Badges.

The Contractor will ensure that employees whose services are no longer required in the contract performance turn in their restricted passes/badges prior to effective pay settlement. The Contractor will immediately notify the COR telephonically and in writing when services of a Contractor employee are terminated.

H.11 NEGOTIATION OF FOLLOW ON CONTRACT FOR DISTRIBUTION.

H.11.1 The Government intends to enter into sole source negotiations for utility distribution services with the Contractor prior to the end of the current contract.

a. Twenty four (24) months prior to the end of the contract term (50 years), the Government will notify the Contractor, in writing, of its intent to enter into sole source negotiations.

b. Within 30 days of the above notice, the Contractor shall submit its proposal for the follow-on contract.

c. The Government and Contractor shall officially enter into negotiations after the receipt of the Contractor's proposal.

H.11.2 If after 3 months from the beginning of negotiations, no agreement has been reached the Government intends to utilize Alternate Disputes Resolution (ADR) to resolve the impasse. This will be accomplished in accordance with FAR 33.214. Possible ADR methods include, but are not limited to, mediation, neutral evaluation, fact-finding and arbitration.

H.11.3 If use of ADR procedures does not result in an agreement between the Contractor and the Government six months prior to contract expiration, the Government shall conduct market research to determine the fair market price of utility distribution services along the privatized system. This market research may be in the form of a solicitation for competitive offers to acquire the system and provide utility distribution services on the privatized system. If through market research it is determined that the incumbent Contractor(s)' best offer proposed through the ADR process represents the best value to the Government, a sole source follow-on contract will be awarded to the incumbent. If market research indicates that another offeror's proposed offer is a better value to the Government, the system will be re-acquired by the Government from the incumbent contractor for the unrecovered capital investment as defined in Section I *FAR 52.215-2 Audit and Records – Negotiation (Aug 1996)*, and in accordance with paragraph H.12 *Transfer of System Ownership*.

H.12 TRANSFER OF SYSTEM OWNERSHIP

H.12.1 The Government will transfer system ownership to the Contractor(s) through a bill of sale. The bill of sale will contain terms in addition to the standard sale terms. An example of the bill of sale is included in Section J. If this contract is terminated for default, the ownership of the system shall revert to the Government. The Contractor shall not be due any termination costs. A settlement will be reached prior to termination on the disposition of any unrecovered capital investment.

H.12.2 The Contractor shall not sell or agree to sell all or any part of the system in a single transaction or a series of related transactions without first offering to sell it to the Government. Prior to the Contractor entering into an agreement to sell the system, the Contractor shall provide a signed copy of the offer in writing (First Offer) to the Government. If a Contractor proposes to sell a system, the first offer shall, at a minimum, include the following information:

- (a) Name of the proposed acquiring entity;
- (b) the proposed price;
- (c) the method of payment of the purchase price;
- (d) the amount and terms of any Contractor financing;
- (e) proposed UDC systems to be sold.

H.12.3 Reacquisition Process.

H.12.3.1 Evaluation Period. The Government shall have 6 months from the date of the First Offer, or any mutually agreed period (Evaluation Period) to enter into negotiation with the Contractor, by delivering to the Contractor a written notice prior to the Contractor's close of business on the last day of the Evaluation Period. The Government shall have 6 additional months to make a counter offer (Counter Offer Period). The Contractor and the Government shall meet as often as requested by either party during the 1 year period (Evaluation/Counter Offer) for the purpose of clarification. If the Government fails to accept the First Offer or make a counter offer within 1 year of the First Offer, the Contractor may sell the system to the party named in the First Offer according to the terms of the First Offer.

H.12.3.2 Negotiation Period. The Government and the Contractor will meet at the end of the 1 year period (Evaluation/Counter Offer) to negotiate the purchase price. At the latest, negotiations will begin the day after the 1 year period expires, but may begin sooner if both Government and Contractor agree. If, after 6 months (Negotiation Period) from beginning the negotiations, the Contractor and the Government have not agreed upon a purchase price, the Government's right of first offer shall be terminated. After the Government's right of first offer is terminated, the Contractor may sell the system to the party named in the First Offer according to the terms of the First Offer.

H.12.3.3 Closing Period. Upon conclusion of successful negotiations, the Government shall have 6 months to consummate the purchase of the utility system (Closing Period). If the Government fails to consummate the purchase of the system within the Closing Period, any earnest money paid by the Government shall be paid to the Contractor as Contractor's liquidated damages, and the agreement to purchase the system together with the right of first offer shall be terminated. After the Government's right of first offer is terminated, the Contractor may sell the system to the party named in the First Offer according to the terms of the First Offer.

H.12.4 Duration of Right of First Offer. The Government's right of first offer shall begin with the date ownership of a particular system is transferred to a particular Contractor by the Government and continue until the Installation upon which that particular system resides ceases to be an active military base, unless the contract is terminated sooner, in accordance with the terms herein. The right of first offer shall automatically terminate and have no further effect upon the first of the following events to occur:

- (a) The Government assigns the Government's rights hereunder (e.g. the installation is closed due to base realignment and closure (BRAC) and the installation is donated or sold to another entity);
- (b) The Government and the Contractor(s) fail to negotiate a purchase price as stipulated herein;
- (c) The purchase of the system by the Government.

Note: The right of first offer does not terminate with the expiration of the 50-year contract term.

H.13 52.0239-4100 YEAR 2000 COMPLIANCE

In accordance with FAR 39.106, the contractor shall ensure that with respect to any design, construction, goods, or services under this contract as well as any subsequent task/delivery orders issued under this contract (if applicable), all information technology contained therein shall be Year 2000 compliant. Specifically the contractor shall:

(a) Perform, maintain, and provide an inventory of all major components to include structures, equipment, items, parts, and furnishings under this contract and each task/delivery order, which may be affected by the Y2K compliance requirement.

(b) Indicate whether each component is currently Year 2000 compliant or requires an upgrade for compliance prior to government acceptance.

End of Clause

(CENAB-CT Sep 1998)

(FAR 39.105)

(USACE MEMO 7/98)

H.14 KEY PERSONNEL

The contractor shall designate those key personnel, which are considered essential for performance under this contract. Prior to diverting any of the specified individuals to other programs, the contractor shall notify the Contracting Officer reasonably in advance. The contractor shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the contractor without the written consent of the Contracting Officer: PROVIDED, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel listing may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

H.16 FEDERAL, STATE, AND LOCAL TAXES

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification. "All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

END OF SECTION H